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ORIGINAL

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2002 MAY 23 P 1:33

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

9 WILLIAM A. MUNDELL
CHAIRMAN
10 JIM IRVIN
COMMISSIONER
11 MARC SPITZER
COMMISSIONER
12

DOCKET NO. E-01032C-00-0751

NOTICE OF FILING
ORIGINAL DECLARATION

13 IN THE MATTER OF THE APPLICATION
OF THE ARIZONA ELECTRIC DIVISION
OF CITIZENS COMMUNICATIONS
14 COMPANY TO CHANGE THE CURRENT
PURCHASED POWER AND FUEL
15 ADJUSTMENT CLAUSE RATE, TO
ESTABLISH A NEW PURCHASED POWER
16 AND FUEL ADJUSTMENT CLAUSE
BANK, AND TO REQUEST APPROVED
17 GUIDELINES FOR THE RECOVERY OF
COSTS INCURRED IN CONNECTION
18 WITH ENERGY RISK MANAGEMENT
INITIATIVES.
19
20
21

Arizona Corporation Commission

DOCKETED

MAY 23 2002

DOCKETED BY	
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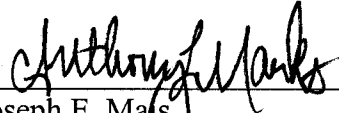
22 PLEASE TAKE NOTICE that Citizens Communications Company has today filed the
23 original of the Declaration of Paul M. Flynn in connection with its Reply in Support of Its Notice of
24 Appearance of Substitute Counsel. A facsimile copy was filed on May 22, 2002, with the Reply.
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26 ...
27 ...
28 ...

1 Dated: May 23, 2002.

2 Respectfully submitted,

3 BROWN & BAIN, P.A.

4
5
6 By


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10 Attorneys for Citizens Communications
Company

11 Original and ten copies filed
12 May 23, 2002, with:

13 Docket Control
14 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

15 Copy of the foregoing mailed
16 May 23, 2002, to:

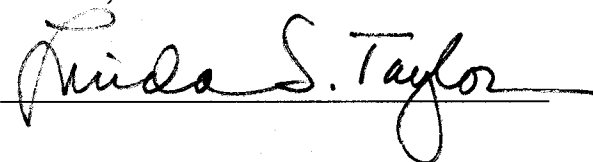
17 Dwight Nodes
18 Administrative Law Judge
Hearing Division
19 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

20 Chairman William Mundell
21 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

22 Commissioner Jim Irvin
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DECLARATION OF PAUL M. FLYNN

I, PAUL M. FLYNN, declare as follows:

1. I am a member of the law firm of Wright & Talisman, P.C., and have submitted prepared written testimony on behalf of Citizens Communications Company ("Citizens") in Arizona Corporation Commission Docket No. E-1032C-00751. This affidavit is based on matters within my personal knowledge.

2. Citizens retained Wright & Talisman in 2000 to assist Citizens in connection with its dispute with Arizona Public Service Company ("APS") regarding their 1995 Power Supply Agreement.

3. In the course of representing Citizens, Wright & Talisman considered the possibility of filing a lawsuit against APS or related entities in Arizona state or federal court. Wright & Talisman suggested to Citizens that it would be useful to retain as local counsel a local lawyer familiar with the Arizona federal and state court system to advise us on procedural aspects of complex civil litigation in those fora, including such matters as the backlog of the civil docket in those courts, the degree of difficulty, in general, of obtaining preliminary injunctive relief in commercial litigation in such courts, and other tactical and procedural issues that would affect such a lawsuit and whether it could be resolved expeditiously.

4. Citizens retained Joseph E. Mais, and the Phoenix firm of Brown & Bain, P.A., to advise us on the topics discussed in paragraph 3. I understand that Mr. Mais and Brown & Bain had previously represented Citizens in litigation matters.

5. Mr. Mais and a Brown & Bain associate, Brian Lake, provided advice (in both written and oral form) regarding the topics discussed in paragraph 3. Wright & Talisman did not ask Brown & Bain to opine regarding the merits of Citizens' dispute with APS, or whether Citizens should bring a lawsuit or regulatory action against APS.

6. The substance of this advice is discussed at pages 9-10 of the rebuttal testimony I submitted in this matter, where I said:

1 "[O]ur communications with Citizens' local Arizona counsel
2 highlighted that civil litigation in the Arizona federal court would
3 confront an extremely crowded docket and take several years at best.
4 Local counsel also reinforced our conclusion that a preliminary
5 injunction precluding APS's interpretation of the contract—and
thereby granting Citizen[s] relief from high charges during the
pendency of the lengthy litigation—would be very difficult to obtain in
this lawsuit, as it would be essentially a contract suit for which money
damages are usually recognized as sufficient."

6 7. Attached as Exhibit 1 are my handwritten notes of a telephone conversation with
7 Mr. Mais. Those notes reflect discussions of the type mentioned in paragraph 3 and in my direct
8 testimony.

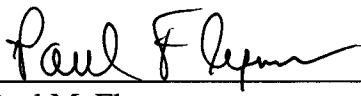
9 8. Attached as Exhibit 2 is an April 26, 2001 letter and accompanying memorandum.
10 The memorandum (authored by Messrs. Mais and Lake) discusses topics of the type mentioned in
11 paragraph 3 and in my rebuttal testimony.

12 9. The Brown & Bain lawyers did not advise me, and to the best of my knowledge, did
13 not advise Citizens, about the merits of Citizens' dispute with APS.

14 10. If called to testify, I am capable of testifying about the advice, as described above,
15 that Brown & Bain lawyers provided to Wright & Talisman and, through us, to Citizens, in Spring
16 2001.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on this ^{22nd} day of May, 2002.

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20 
21 Paul M. Flynn